



Administrative Policies and Procedures: 14.11

Subject:	Child Protective Services Due Process Rights and Reviews
Authority:	TCA 37-1-401 et seq; 37-1-601 et seq; 37-1-607; 37-5-105; 37-5-106; 37-5-107; Child Abuse Prevention and Treatment Act (CAPTA)
Standards:	None
Application:	All Department of Children's Services Child Protective Services and Special Investigations Unit Employees

Policy Statement:

DCS shall establish administrative and due process procedures for the disclosure of the contents of Child Protective Services (CPS) files and the results of CPS investigations for the purpose of protecting children from abuse, severe child abuse, child sexual abuse or neglect, and shall preserve rights and due process rights of an individual¹ classified in an indicated report as perpetrator of child abuse and/or neglect.

Purpose:

To ensure a timely due process to release the identity and other related information of a perpetrator in an indicated report of abuse, severe child abuse, child sexual abuse, or neglect to organizations or individuals providing care, supervision, instruction or treatment of a child or children either as an employee, employer or volunteer.

Procedures:

A. When due process notification should occur	<p>Due process notification applies to an individual classified in an indicated report as perpetrator of child abuse and/or neglect, who:</p> <ol style="list-style-type: none">1. Committed abuse, severe child abuse, physical abuse, child sexual abuse or neglect of a child, or2. Failed to protect a child from abuse, severe child abuse, physical abuse, child sexual abuse or neglect, and3. Currently has access to children either through employment or volunteer status in a child-serving agency, institution, organization, public or private school, or through self-employment, and DCS seeks to release information to that organization;4. Voluntarily or involuntarily terminated the working relationship where s/he did have access to children either through a child-serving agency, institution, organization, public or private school, or through self-employment, prior to completion of the CPS investigation; or
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	5. Is already approved as a foster or adoptive parent.
B. Determining need to release information	<ol style="list-style-type: none"> 1. Any unauthorized release of a report of abuse, severe child abuse, child sexual abuse, or neglect constitutes a class B misdemeanor. 2. Until the affected individual has exhausted all reviews permitted by the <i>Rules of Child Protective Services, Chapter 0250-7-9</i>, the Department will not release any information from its records to any organization or person for purposes of pre-employment screening or licensing, to identify any individual as a perpetrator abuse, severe child abuse, child sexual abuse, or neglect. 3. When it is determined that there is a need to release information, contact the appropriate Regional Legal Counsel. The Legal Counsel will inform the team leader when to initiate due process in non-emergency and emergency situations. 4. If the Department does not begin procedures to release the identity and other related information of a perpetrator in an "indicated" report of abuse, severe child abuse, child sexual abuse, or neglect within two years of the initial classification, the Department will not release any information as to that report. This provision will not, however, require expunction of this information from the Department's internal records.
C. Emergency situations – when the perpetrator has access to a child	<ol style="list-style-type: none"> 1. Initiating Due Process – Emergency As soon as reasonably possible after the Department has investigated and identified an individual in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect, who poses an immediate threat to the health, safety or welfare of a child or children to whom the alleged perpetrator has access, the Department will conduct an emergency file review in accordance with <i>CPS Rule 0250-7-9-.07</i>. The Special Investigations Unit (SIU) will conduct investigations of allegations of child abuse and neglect that occur when the alleged perpetrator's employment or volunteer status is affected by working with children from the following agencies/organizations: <ol style="list-style-type: none"> a) Child care program or child-serving agency b) Institutional or residential child caring facility c) Public or private school d) Religious organizations e) Approved foster or adoptive parent f) Any other organization (e.g., athletic association, community center, tutoring program, camp program, church-sponsored program, transportation service) 2. The cases that involves the above entities will be forwarded to:

**Special Investigations Unit
Emergency File Review
1270 Foster Avenue, Nix #4
Nashville, TN 37210**

3. When the above criteria has been met, the following steps must occur:
 - a) The CPS Investigator will notify the SIU Staff and request an Emergency File Review.
 - b) The CPS Investigator will send the completed case record and any other information regarding the investigation immediately by express mail to the SIU Staff.
 - c) The file must be clearly identified as "Emergency Due Process", and include the date that SIU Staff was notified.
 - d) The SIU Staff will promptly review the case to determine if the investigation was properly classified and will notify the county office of the review results.
4. The Child Protective Services Unit will accept the cases from the following which are subject to due process:
 - a) Babysitter;
 - b) Non-custodial child on child sex abuse; and
 - c) Abuse that occurred on custodial children while on runaway status, trial home visit, or home pass by a person in these settings.
5. The cases that involves the above entities will be forwarded to:

**Department of Children's Services
Child Protective Services Division
Emergency File Review
8th Floor Cordell Hull Building
436 Sixth Avenue, North
Nashville, TN 37243-1290**

6. When the above criteria has been met, the following steps must occur:
 - a) The CPS Investigator will notify the CPS Staff and request an Emergency File Review.
 - b) The CPS Investigator will send the completed case record and any other information regarding the investigation immediately by express mail to the CPS Staff.
 - c) The file must be clearly identified as "Emergency Due Process", and include the date that CPS Staff was notified.
 - d) The CPS Staff will review the case in five (5) business days to determine if the investigation was properly classified and will notify the county office of the review results.

7. Classification Upheld

- a) If the classification is upheld upon review, SIU or CPS Staff will inform the perpetrator of the results of the investigation and the results of the completed review by sending form **Letter #2 A or B, Notice of Results/Request for Administrative Hearing**. This notification will:
- ◆ Include information on his/her right to appeal this decision through an administrative hearing.
 - ◆ Advise the perpetrator that his/her employer² is being notified that an administrative process is underway to determine the disposition of the allegations; and
 - ◆ Include a *copy* of the letter to the perpetrator's employer.
- b) All due process notification letters must be sent by **certified mail, return receipt requested, and marked "personal and confidential" on the envelope**.
- c) Copies of the notification letter will be sent to the appropriate CPS Investigator and the team leader, team coordinator, Regional Administrator, Regional Legal Counsel and DCS Administrative Procedures Division.
- d) The perpetrator must send a written request on form **Letter #2, Request for Administrative Hearing** to appeal to DCS Administrative Procedures Division within ten (10) business days from the date the letter was sent (the official date stamped on the letter by the Postal Service).
- e) The date of receipt must be stamped immediately on the request as soon as the Administrative Procedures Division staff receives it.
- f) The Administrative Procedures Division staff will notify the perpetrator of all rights and responsibilities regarding the appeal process by administrative hearing.

8. Employer Notification

SIU or CPS will provide a notification letter to the perpetrator's employer on form **Letter #3, Notice to Employer/Organization/Agency** that explains that an administrative process is underway to determine the disposition of the allegations but only after an emergency file review has occurred that must be signed by Legal Counsel and SIU or CPS.

9. Appeal summary to be prepared by the CPS Investigator

- a) When the perpetrator requests an Administrative hearing, the Administrative Procedures Division staff will notify the CPS Investigator team leader, team coordinator, Regional Administrator and Regional Legal Counsel of the request.
- b) The CPS Investigator will be directed to prepare an *appeals summary* on the **Due Process Appeal Summary Guidelines** and provide this to the Administrative Procedures Division.

	<p>10. Classification Not Upheld at the Administrative Procedures Level</p> <ul style="list-style-type: none"> a) The Administrative Procedures Division staff will notify Central Office CPS staff to change the classification in TNKids. b) Central Office CPS Staff will direct the CPS Investigator to document the change in TNKids case recordings and notify the District Attorney, Juvenile Court, and CPIT, as appropriate. <p>11. SIU or CPS overturns the classification</p> <p>When SIU or CPS staff overturns the classification decision, program staff will:</p> <ul style="list-style-type: none"> a) Send the employer Letter #3, Upheld Notice to Employer/ Organization/ Agency. b) Send the perpetrator Letter #6, Notification of Final Results letter on Central office letterhead. Change the classification information in TNKids. c) Notify the CPS case worker and team leader of the change in classification and send a <i>copy</i> of the notification letter sent to the perpetrator. d) Direct the CPS case worker to record the change of classification in TNKids case recordings and to notify the District Attorney, Juvenile Court, and CPIT, as appropriate.
<p>D. Non-Emergency situations – when the perpetrator does not have access to a child</p>	<p>1. Initiating Due Process – Non-Emergency</p> <p>At the conclusion of the classification process, DCS must initiate due process when the perpetrator or individual who failed to protect does not have current access to a child through employment or volunteer status in an agency/organization. This includes individuals who were suspended during the investigation or temporarily do not have access to the child. The situation does not constitute an emergency unless the perpetrator returns to a position having contact with children.</p> <p>2. Perpetrator notification by the CPS Investigator</p> <ul style="list-style-type: none"> a) All due process notification letters must be sent by certified mail, return receipt requested, and marked "personal and confidential" on the envelope. b) When a perpetrator or individual who failed to protect is indicated, but is not in a position having current contact with children, the CPS Investigator will send Letter A, Notification of Right to a Formal File Review and CS-0554, Request for Formal File Review to the perpetrator that will be filled out by the CPS Program field staff and perpetrator and sent back to DCS as a written request for an administrative hearing. This letter will: <ul style="list-style-type: none"> ◆ Inform the individual or perpetrator that based on findings of an investigation, he/she has been identified as a person who committed child abuse, child sexual abuse or child neglect. ◆ Explain the right to request a Formal File Review of the case by DCS.

- c) The perpetrator must return form **CS-0554, Request for a Formal File Review** to DCS Central office CPS program staff within ten (10) business days from the date the letter was sent (the official date stamped on the letter by the Postal Service).
- d) When a Formal File Review request is received, SIU or CPS will notify the case worker and team leader to send the case record and any other pertinent information to CPS Central Office program staff.
- e) The Reviewer will respond to request for a Formal File Review within ten (10) business days of receiving the request for review by sending **Letter B, Acceptance of Formal File Review Request** that outlines the perpetrator's obligations in the file review process.
- f) The notice of review obligations will contain the following information:
 - ◆ The perpetrator's right to submit additional written information to the Reviewer within thirty (30) business days of the date on **Letter B**;
 - ◆ If he or she does not submit additional information within thirty (30) business days, the review will proceed with the information provided and the right to submit additional information will be forever waived; and
 - ◆ An exception to the time limit may be granted if the indicated perpetrator can show evidence of good cause. The Reviewer is responsible for determining a good cause exception. Some examples of "good cause" are, but not limited to:
 - 1) Failure to receive the notice,
 - 2) Severe illness, or
 - 3) Other disabling condition that substantially prevents the individual from submitting the information within the time limit.
- g) The team leader, upon receiving a copy of **Letter B** will:
 - ◆ Forward via Express Mail, within fifteen (15) business days, mail or hand deliver a **copy** of the entire investigative file, which will include all paper documentation and electronic documentation (i.e., audiotapes, videotapes, photographs, etc.).
- h) If the perpetrator is a minor who is in state custody, the team leader must contact the Regional Legal Counsel to secure resources for assisting the minor with submitting additional written information to the reviewer within thirty (30) business days of the date on **Letter B**.

3. Perpetrator's Right to Appeal after a classification is upheld by SIU or CPS

If the classification is upheld upon review, SIU or CPS will send **Letter #2, Notice of Right to Administrative Hearing** to the perpetrator to inform the perpetrator of the results of the investigation and his/her right to appeal the indicated classification decision. Include attachment, **Request for Administrative Hearing** that must be completed and returned by the perpetrator to request an Administrative Hearing. The notification letter will

inform the perpetrator:

- a) The results of the Formal File Review and his/her right to and Administrative Hearing;
- b) The attachment to **Letter #2, Request for Administrative Hearing** must be returned to DCS Administrative Procedures Division within ten (10) business days from the date the letter was sent (the official date stamped on the letter by the Postal Service).
- d) The date of receipt must be stamped immediately on the request as soon as the Administrative Procedures Division staff receives it.
- e) The Administrative Procedures Division will notify the perpetrator of all rights and responsibilities.
- f) Until the affected individual has exhausted all reviews permitted by the *CPS Rule 0250-7-9-.03*, the Department will not release any information from its records to any organization or person for purposes of pre-employment screening or licensing, to identify any individual as a perpetrator abuse, severe child abuse, child sexual abuse, or neglect.
- g) Copies of the notification letter will be sent to the CPS case worker and the team leader, Regional Administrator, team coordinator and Regional Legal Counsel.

4. Overturned classification

When SIU or CPS overturns the classification decision, staff will:

- a) Send the Perpetrator **Letter #4, Notification of a Change of Classification to the Perpetrator**.
- b) Change the classification information on TNKids.
- c) Notify the CPS case worker and team leader of the change in classification and send a copy of the notification letter sent to the perpetrator.
- d) Direct the CPS case worker to record the change of classification in TNKids case recordings and to notify the DA, Juvenile Court, and CPIT, as appropriate.

5. Employer/organization notification

- a) Until the affected individual has exhausted all reviews permitted by the *Rules of Child Protective Services, Chapter 0250-7-9*, the Department will not release any information from its records to any organization or person for purposes of pre-employment screening or licensing, to identify any individual as a perpetrator abuse, severe child abuse, child sexual abuse, or neglect.
- b) When it is determined that there is a need to release information, contact the appropriate Regional Legal Counsel. The Regional Legal Counsel will inform the team leader when to initiate due process in non-emergency and emergency situations.
- c) If the Department does not begin procedures to release the identity and other related information of a perpetrator in an "indicated" report of abuse, severe child abuse, child sexual abuse, or neglect within two (2) years of

	<p>the initial classification, the Department will not release any information as to that report. This provision will not, however, require expunction of this information from the Department's internal records.</p>
<p>E. Notification to Central office CPS staff of a perpetrator's pending legal action related to the issue of child abuse/neglect</p>	<p>1. Stay of Due Process</p> <ul style="list-style-type: none"> a) The CPS case worker will immediately notify the appropriate Regional Legal Counsel and Central Office CPS Program Staff (or Administrative Procedures Division) of any arrest, indictment, or other judicial or administrative proceeding involving the perpetrator on form CS-0667, Request To Stay Due Process Review. b) Central Office staff or the Administrative Procedures Division will then stay the due process until court action is completed if the other legal action involves the same issue of abuse or neglect and send form Letter #5, Notice of Stay to Perpetrator. <p>2. Reinstatement of Due Process</p> <ul style="list-style-type: none"> a) After the legal action is completed, the perpetrator may request that the due process proceedings be reinstated by writing to the DCS Office of Child Safety within thirty (30) days of the date that the tribunal issues a final order that does not find the person as a perpetrator of child abuse. <ul style="list-style-type: none"> ◆ If the review was stayed at the Formal File Review level, the review will be reinstated at that level. ◆ If the Administrative Hearing Judge stayed, the Administrative Procedures Division will reinstate the review. b) The SIU, CPS or the Administrative Hearing Judge must notify the perpetrator that failure to request reinstatement within thirty (30) days results in the disclosure of the investigative finding. c) If no request to reinstate due process is made, Regional General Counsel, SIU or CPS staff will advise any child welfare agency with whom the perpetrator may be working, their licensing authority, or any other organization/agency through which the perpetrator has access to a child that the tribunal found the perpetrator indicated of child abuse or neglect and/or DCS has indicated the perpetrator for physical, severe or sexual abuse of a child. <p>3. Appeal summary</p> <ul style="list-style-type: none"> a) If the alleged perpetrator requests an administrative hearing, the case worker must prepare CPS Appeals Summary and send the appeals summary to the Administrative Procedures Division. b) The appeal summary provides all involved parties (DCS, Administrative Hearing Judge and perpetrator) with a summary report that details identifying information on: <ul style="list-style-type: none"> ◆ The child victim(s) ◆ Caretaker(s) and perpetrator(s);

	<ul style="list-style-type: none"> ◆ The incident(s) investigated; ◆ The evidence collected; ◆ DCS correspondence sent to the perpetrator(s); ◆ Judicial proceeding filed on the perpetrator and/or child victim; and ◆ A listing of potential witnesses contributing to the classification decision-making process <p>4. Changing classification upon administrative review</p> <p>Upon receipt of a Final Order following the administrative review, if the classification is overturned:</p> <ul style="list-style-type: none"> a) The Administrative Procedures Division Staff will notify SIU or CPS to change the classification to “unfounded” in TNKids. b) The case worker or team leader will be directed by the Administrative Procedures Division Staff to record the change in TNKids case recordings and the case record and notify the DA, Juvenile Court and CPIT, as appropriate.
<p>F. Releasing the finding</p>	<p>1. Perpetrator responsible for abuse</p> <ul style="list-style-type: none"> a) Until the affected individual has exhausted all reviews permitted by the <i>Rules of Child Protective Services, Chapter 0250-7-9</i>, the Department will not release any information from its records to any organization or person for purposes of pre-employment screening or licensing, to identify any individual as a perpetrator abuse, severe child abuse, child sexual abuse, or neglect. b) When it is determined that there is a need to release information, contact the appropriate Regional Legal Counsel. The Legal Counsel will inform the team leader when to release the findings. c) When there is a final order naming a perpetrator or individual who failed to protect in abuse, physical abuse, sexual abuse and neglect cases as responsible for child abuse, all departmental due process procedures are exhausted. <p>2. Perpetrator not responsible for abuse</p> <p>SIU or CPS will send <i>Letter #4, Notice of Change of Classification/ Allegation to Perpetrator.</i></p> <p>3. Final order</p> <ul style="list-style-type: none"> a) Following the administrative hearing, the Administrative Procedures staff will review the initial order before it becomes a final order. b) When the Administrative Procedures staff issues a final order, the CPS case worker will follow all directions provided. No information will be released to the employer or agency/organization until the final order verifies that:

	<ul style="list-style-type: none"> d) The individual is a perpetrator of child abuse, e) The central office CPS program staff has been contacted, and f) It has been determined that no stay has been issued by the Administrative Procedures Division and no other appeals have been filed. c) Consult DCS regional counsel for assistance or clarification of the Final Order directives. d) Inform any licensing agency of the findings in the Final Order.
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Forms:	<p><u>CS-0667, Request To Stay Due Process Review</u></p> <p><u>Letter 2A: Notification to Indicated Perpetrator (Emergency File Review)</u></p> <p><u>Letter 2B: Notification to Indicated Perpetrator (Regular File Review)</u></p> <p><u>CS-0554, Request for Formal File Review (Attachment to Letter A)</u></p> <p><u>Letter #2, Notice of Right to Administrative Hearing and Request for Administrative Hearing (Attachment to Letter #2)</u></p> <p><u>Letter #3, Notice to Employer/Organization/Agency</u></p> <p><u>Letter #4, Notice of Change of Classification/Allegation to Perpetrator</u></p> <p><u>Letter #5, Notice of Decision to Stay Adm. Hearing</u></p> <p><u>Letter #6, Notification of Final Results</u></p> <p><u>CPS Appeal Summary Guidelines</u></p>
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Collateral documents:	<u>Rules of Child Protective Services, Chapter 0250-7-9</u>
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Glossary:	
Term	Definition
Formal File Review:	A review established pursuant to 42 U.S.C. § 5106a (2) (B) (i) that is available to individuals whom the Department identifies or proposes to identify as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect. The Department will use a formal file review as the sole form of due process when the information regarding the report and identity of the perpetrator will be placed in the registry identified in Rule 02507-9-02(1)(c). The Department will use a formal file review as the initial form of due process when the information regarding the report and identity of a perpetrator must be released to any organization identified in Rule 02507-9-02(1)(a) or (1)(b), and will also afford the right to a hearing as provided in Rule 0250-7-9-07.
Overtaken:	(Pertaining to CPS): There is insufficient evidence that abuse or neglect occurred and a classification change is documented in the case file.

Upheld:	(Pertaining to CPS): Supported. There is substantial and material evidence that abuse or neglect occurred.
Stay:	To stop or delay a proceeding.

¹ Herein referred to as “perpetrator”.

² **Note:** Anytime the Department decides to share information about an indication of any type of abuse with a person’s employer, the alleged perpetrator must be afforded an administrative hearing. No information can be shared before the emergency formal file review. After that, an administrative hearing must be offered to the alleged perpetrator.